1	T	V	T	r	F	D	)	<b>C</b> r	$\Gamma_{L}$	٨	Т	Ŧ	7	C	1	1	T	C	7	T	21	ī	$\mathbb{C}^{r}$	Г	$\boldsymbol{C}$	$\cap$	I	П	R	Т	
		•			٠,		,	•	•	٠.			'41	. 7		•		. 7			•	ı	٠.	•	•	•	,,		•		

## EASTERN DISTRICT OF TEXAS

VICKI STARKS-FITTS,

Movant,

Versus

Versus

VICKI STARKS-FITTS,

Respondent.

S

CIVIL ACTION NO. 1:15-CV-89

Respondent.

S

Respondent.

## MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Vicki Starks-Fitts filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court.

One of the grounds for review asserted by movant would, if resolved in her favor, entitle her to an out-of-time appeal. The government has stated it does not oppose this motion to vacate insofar as it seeks an out-of-time appeal. Based on this concession, the magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that movant be allowed to file an out-of-time appeal and dismissing the motion to vacate without prejudice in all other respects.

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. No objections were filed to the Report and Recommendation.

## **ORDER**

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. The motion to vacate is **GRANTED** to the extent movant shall be allowed to proceed with an out-of-time appeal and **DISMISSED** without prejudice in all other respects. The judgment in *United States v. Starks-Fitts*, 1:12cr119(4), is **VACATED** and the Clerk of Court shall reinstate the judgment as of the date of entry of the final

judgment in this proceeding. Movant shall have 14 days from such date in which to file a notice of appeal. If appropriate, counsel will be appointed to represent movant on appeal. An appropriate final judgment shall be entered.

SIGNED at Tyler, Texas, this 28th day of June, 2019.

Marcia A. Crone.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE